



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *J. A. v Canada Employment Insurance Commission*, 2019 SST 228

Tribunal File Number: GE-19-9

BETWEEN:

J. A.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Eleni Palantzas

HEARD ON: January 23, 2019

DATE OF DECISION: January 28, 2019

DECISION

[1] The appeal is dismissed. The Claimant was overpaid benefits to which he was not entitled because he was off on parental leave for only two weeks and had to serve the waiting period.

OVERVIEW

[2] The Claimant applied for employment insurance parental benefits for the two weeks of October 2, 2015 to October 15, 2015. The Claimant returned to work on October 19, 2015. The Canada Employment Insurance Commission (Commission) determined that the Claimant had to serve the two-week waiting period and then subsequently paid him parental benefits for the weeks of October 18, 2015 and October 25, 2015. Because the Claimant had returned to work during these latter two weeks, he also received earnings. The Commission allocated his earnings only to the week of October 18, 2015. This resulted in an overpayment of \$355. The Claimant requested that the Commission reconsider its decision arguing that he thought that the parental benefits he received were for the two weeks he was off work and did not know about the waiting period. The Commission maintained its decision noting that the Claimant had to serve the waiting period and that although he was exempt from completing claim reports; he should have informed the Commission of his return to work. The Claimant disagreed that it was his error and appealed to the Social Security Tribunal of Canada (Tribunal).

ISSUE

Should the Claimant's wages be allocated to the weeks of October 18, 2015 and October 25, 2015?

ANALYSIS

[3] Sometimes a claimant may receive other monies at the same time that he/she receives employment insurance benefits. The Commission must decide whether these other monies are considered 'earnings' and whether these earnings should be applied (allocated) to the period a claimant is entitled to receive benefits (benefit period). The *Employment Insurance Regulations*

(Regulations) provide direction as to what monies are considered ‘earnings’ (section 35) and how these earnings are to be allocated to the benefit period (section 36).

[4] The following facts are undisputed. The Claimant confirmed that he returned to work on October 19, 2015. He does not dispute the wage amounts reported by his employer for the weeks of October 18, 2015 and October 25, 2018. The parties agree that the wages that the Claimant received during these weeks are considered earnings. The Claimant also does not dispute that he received two weeks of parental benefits.

[5] The Claimant argues however, that the Commission erred in paying him benefits to which he was not entitled. He provided his return to work date on his application form. He did not know that he had to serve a two-week waiting period; otherwise, he would not have applied for benefits at all.

Issue 1: Should the Claimant’s wages be allocated to the weeks of October 18, 2015 and October 25, 2015?

[6] Yes. The wages the Claimant received from his employer for these two weeks are considered earnings. They must therefore be allocated to the weeks that the wages were earned. The Claimant must repay the overpayment of \$355 that the Commission is requesting.

[7] The Commission submitted that although the Claimant had indicated on his application form that he planned to return to work on October 19, 2015, he did not notify the Commission that he had actually returned on that date. The Commission argued that by requesting to be exempt from submitting claim reports, the Claimant agreed to notify the Commission of his return to work and earnings. As a result, two weeks of parental benefits were paid to him after the waiting period for the weeks of October 18, 2015 and October 25, 2015. The Commission submitted that the Claimant’s wages are considered earnings and that they must be allocated to the weeks in which the work was performed. The Commission acknowledges however, that unfortunately the agent failed to allocate the Claimant’s earnings to the week of October 25, 2015. The Commission advises that it “will not go back and correct the claimant report for the week of October 25, 2015 as the claimant was not responsible for the error of the agent” (GD4-3).

[8] On the other hand, the Claimant submitted that this is the first time that he is applying for employment insurance benefits so he did not know about the two-week waiting period. Had he known, he would not have applied at all because he was applying for only two weeks of parental benefits any way. When he received the two weeks of benefits he thought it was for the two weeks that he had requested. The Claimant confirmed that he return to work on October 19, 2015. He does not refute the wages as reported by the employer nor the benefits that he received.

[9] The Member agrees with the parties that the Claimant's wages are considered earnings according to the Regulations and that they must be allocated to his benefit period. Earnings are a claimant's entire income arising out of any employment (subsection 35(2) of the Regulations). The Claimant's wages are considered earnings because they were paid to him for the performance of services. They must therefore be allocated to the period in which the services were performed (subsection 36(4) of the Regulations).

[10] The Member finds that the earnings of \$364.50 should have been allocated to the week of October 18, 2015 and \$364.50 should have been allocated to the week of October 25, 2015. Instead, the Commission erred and allocated the total earnings of both weeks (\$649) to the week of October 18, 2015. This resulted in an overpayment of benefits for only that week in the amount of \$355. The Commission provided details of the benefit amounts paid to the Claimant and the allocation (GD3-19). The Commission acknowledges its error. It has decided not to collect the overpayment for the week of October 25, 2015.

[11] The Member finds that the Commission erred in the manner in which it allocated the Claimant's earnings. The Claimant is responsible for any resulting overpayment from the correct allocation of his earnings to the weeks of October 18, 2015 and October 25, 2015. The Member acknowledges however, that it is not within the jurisdiction of the Tribunal to "write-off", forgive or extinguish a debt owed to the Commission (Villeneuve 2005 FCA440, Buffone A-666-99). Only the Commission can make this decision. The Member therefore accepts the Commission's decision to not go back and collect the full overpayment amount.

[12] The Claimant is responsible for repaying the \$355 overpayment requested by the Commission.

CONCLUSION

[13] The appeal is dismissed.

Eleni Palantzas

Member, General Division - Employment Insurance Section

HEARD ON:	January 23, 2019
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	J. A., Appellant